then has a retaining lien.[33] And if he takes securities under circumstances which are inconsistent with the theory of a charging lien, he waives it unless he gives notice to the client that he still relies upon it.[34] In the recent case of *Matter of Heinsheimer* (1915) 214 N. Y. 361, the court held that the attorney's agreement to accept salary, payable semiannually, was inconsistent with reliance upon his charging lien, and therefore constituted a waiver of it. The decision is clearly sound, the agreement indicating that the payment of salary is not a mere additional security to be resorted to only if the right of lien should be barren, but is to be the sole source of remuneration.

LIABILITY OF MUNICIPAL CORPORATIONS FOR PROPERTY DESTROYED BY MOBS.—One of the governmental duties placed by the sovereign power in the hands of municipal officers is that of conserving the peace and good order of the community.[1] Consequently, since in its exercise of public functions a local sub-division of the State enjoys the same exemption from suits as the State itself,[2] the courts are unanimous in holding that under the common law a municipality is not liable for property within it destroyed by a riotous assembly.[3] From the earliest times, however, it was usual to impose upon the vill and hundred in England a fixed liability for lawlessness occurring in their midst with the purpose of engaging the interest of everyone in the suppression of acts of violence.[4] And by statutes of more recent dates persons whose property is damaged by acts of riotous or tumultuous assemblies are given adequate remedies against the local sub-divisions in which such grievances occur.[5] Following the lead of the English legislators and recognizing that the maintenance of social good order is of paramount importance, a number of American States

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[33]Wells *v.* Hatch, *supra*; see Weber v. Werner (N. Y. 1910) 138 App. Div. 127. No intent to waive it can be inferred from the permission of the attorney to his client, or to his assistant counsel, to collect the judgment. Farmer *v.* Stillwater Co. (1909) 108 Minn. 41; Fuller *v.* Clemmons (Ala. 1908) 48 So. 101.

[34]*In re* Morris, *supra*. It was urged by Kennedy, L. J., that the taking of securities for costs generally, should always be a waiver in the absence of notice to the client, because of the confidential relation between attorney and client, p. 480.

[1]See Norristown *v.* Fitzpatrick (1880) 94 Pa. 121.

[2]14 Columbia Law Rev., 690.

[3]Dillon, Municipal Corporations (5th ed.) § 1636; Prather *v.* Lexington (1852) 52 Ky. 559; see Mayor *v.* Poultney (1866) 25 Md. 107. Nor does a provision in a city charter that "it shall be their (the municipal officers') duty to regulate the police of the city, preserve the peace, prevent riots, disturbances and disorderly assemblages" in any way affect the city's common law exemption. Western College *v.* Cleveland (1861) 12 Oh. St. 375.

[4]1 Reeves', History of English Law (2nd ed.) 17; Statute of Winchester, 13 Edw. I, c. 1, 2 & 3 (1285), Poulton's Collection of English Statutes, 55. See Darlington *v.* Mayor (1865) 31 N. Y. 164.

[5]7 & 8 Geo. IV. (1827) c. 31; 49 & 50 Vict. (1886) c. 38.

have passed legislation rendering municipalities liable to persons whose property has been destroyed by the acts of a mob or riot.[6] And while frequently assailed, these statutes have been unanimously upheld by the courts as a valid exercise of the police power in the interests of quiet and good order.[7]

Although the statutes are not uniform in their provisions, they may be said in the main to contain the following elements in common. (1) The recovery is allowable only when the loss was occasioned by a riot or mob.[8] (2) Carelessness or negligence of the plaintiff which authorized, permitted or sanctioned the mob's act will defeat a recovery.[9] (3) The plaintiff must have exercised himself to protect his property. (4) If plaintiff knew of the impending danger he must have given municipal authorities warning thereof.[10] In England what constitutes a riot or mob under the Victorian Statute has been settled;[11] but considerable difficulty has been experienced by judges in this country in arriving at a definition of the term. In some States where the act imposing liability was subsequent in time to a criminal statute defining riot, it has been held that the legislature intended the criminal definition to apply to the statute imposing the liability;[12] while in other jurisdictions one or more elements determinative of what is a riot are prescribed by the statute itself.[13] For the most part, however, resort is had to the common law definition of riot as well as to statu-

[6]A partial list of such legislation follows: Laws of Maryland (1835) c. 137; Statutes of California (1867-68) c. 344; Louisiana, Rev. Stat. (1870) § 2453; Laws of New York (1892) c. 685, § 21; General Statutes of Kansas (1901) § 2501; Laws of New Hampshire (1852-55) c. 1519; Laws of Illinois (1887) 237.

[7]Allegheny *v.* Gibson's Son & Co. (1879) 90 Pa. 397; Sturges *v.* Chicago (1908) 237 Ill. 46; Chicago *v.* Sturges (1911) 222 U. S. 313; see Darlington *v.* Mayor, *supra.*

[8]Fauvia *v.* New Orleans (1868) 20 La. Ann. 410.

[9]In New Hampshire "improper conduct" on the part of plaintiff will defeat his right to recover. New Hampshire Statute, *supra*; Chadbourne *v.* Newcastle (1868) 48 N. H. 196. But negligence which will defeat the plaintiff is not made out by proving that the property destroyed was used in keeping a public nuisance. Moody *v.* Board of Supervisors (N. Y. 1866) 46 Barb. 659, affd. Ely *v.* Board of Supervisors (1867) 36 N. Y. 297.

[10]Fong Yuen Ling *v.* Los Angeles (1874) 47 Cal. 531. Lack of such notice will not defeat plaintiff's action if he did not know of the danger soon enough to allow the authorities time to protect the property had notice been given them. Schiellein *v.* Board of Supervisors (N. Y. 1865) 43 Barb. 490; Long *v.* Neenah (1906) 128 Wis. 40; Moody *v.* Board of Supervisors, *supra.* And notice to one tenant in common will not charge his co-tenant with such notice. Loomis *v.* Board of Supervisors (N. Y. 1872) 6 Lans. 269.

[11]Field *v.* Receiver (1907) 2 K. B. 853, 860.

[12]Cherryvale *v.* Hawman (1909) 80 Kan. 170. An exceptional thing in the Kansas statute is that it imposes the liability not only for property destroyed but also for injuries to life or limb, which is not included under the term property. Gianfortone *v.* New Orleans (C. C. 1894) 61 Fed. 64.

[13]The Illinois Statute, *supra*, makes twelve persons necessary to constitute a riot under its provision.

tory provisions.[14] Accordingly, a great many distinctions have been made between acts equally destructive. If men and boys tear away parts of an unoccupied building on election day but disperse at the sight of police, this is malicious mischief;[15] but where a crowd of people tear down a building and carry away the materials without interference by the police, being engaged several days in the work, this constitutes a mob or riot within the statute.[16] While a political uprising to upset an existing state government has been held not to be a riot,[17] it is well settled that the size or strength of the tumultuous body cannot deprive it of its characteristics as a mob, and it is immaterial as regards the municipality's liability that state and federal troops have to be requisitioned for its suppression.[18] On the other hand, it is not important that the original assembly was for a lawful purpose, if later there was concerted action of an unlawful nature;[19] and even a party engaged in harrassing a newly married couple[20] or a celebration in the public streets may under certain circumstances constitute a riot.[21]

"Persons" entitled to bring an action for property destroyed by a mob include corporations,[22] or municipalities within that on which the liability rests,[23] and it is no defense that the plaintiff is not a citizen of the State where the action is brought.[24] Moreover, a bailee having a special interest in the property and being liable therefor, such as a railroad having cars of another road, is owner within the statutory meaning.[25] Property carried away is included as property

[14]Adamson *v.* New York (1907) 188 N. Y. 255. According to a much quoted definition from Hawkins a riot is, "a tumultuous disturbance of the peace, by three persons, or more, assembling together of their own authority, with an intent mutually to assist one another, against any who shall oppose them, in the execution of some enterprize of a private nature, and afterwards actually executing the same in a violent and turbulent manner, to the terror of the people, whether the act intended were of itself lawful or unlawful." 1 Hawkins, Pleas of the Crown (8th ed.) 513. It seems that the acts need not be to the terror of the people if they were in themselves unlawful. Commonwealth *v.* Runnels (1813) 10 Mass. 522.

[15]Duryea *v.* Mayor (N. Y. 1882) 10 Daly 300; Adamson *v.* New York (N. Y. 1905) 110 App. Div. 58.

[16]Marshall *v.* Buffalo (N. Y. 1900) 50 App. Div. 149, affd. (1903) 176 N. Y. 545.

[17]Street *v.* New Orleans (1880) 32 La. Ann. 577.

[18]Allegheny *v.* Gibson's Son & Co., *supra*; Chicago *v.* Penn. Co. (C. C. A. 1902) 119 Fed. 497.

[19]Solomon *v.* Kingston (N. Y. 1881) 24 Hun. 562.

[20]Cherryvale *v.* Hawman, *supra*.

[21]Madisonville *v.* Bishop (1902) 113 Ky. 106. Here citizens were celebrating the advent of Christmas and exploding fireworks in the public streets. In the case of Aron *v.* Wausau (1898) 98 Wis. 592, a crowd similarly celebrating the Fourth of July was held not to be a riot because of a lack of concerted purpose.

[22]Illinois statute, *supra*; *cf.* Atlantic Dock Co. *v.* Brooklyn (N. Y. 1867) 3 Keyes 444.

[23]Kensington *v.* County of Phila. (1850) 13 Pa. 76.

[24]Allegheny *v.* Gibson's Son & Co., *supra*.

[25]Pittsburg, etc. Ry. *v.* Chicago (1909) 242 Ill. 178; Chicago *v.* Penn. Co. *supra*.

damaged or destroyed within the statute.[26] But further than determining that a human life is not property, within the statute,[27] the courts have not been called upon to construe the meaning of that term until the recent case of *Wells Fargo & Co.* v. *Mayor* (C. C. A., 3rd Cir. 1915) 219 Fed. 699. Here the plaintiff sought to recover for injury done to its business, as well as for the destruction of its tangible property. While conceding that as a matter of abstract reasoning, property "is a right to use, enjoy, and control, and therefore is neither visible nor tangible," the court came to the conclusion that this was not the sense in which the New Jersey legislature employed the term in the statute, and therefore recovery for damages to plaintiff's business was denied.

ACCOUNT BOOK AND REGULAR ENTRIES IN MODERN BUSINESS.—The exception to the hearsay rule which allows the admission of business entries divides itself into two branches, which, though often confused, are distinct in their development and operation. The older of these branches is the account book rule, which allows the shop books of a party to an action to be introduced to show goods delivered or services performed. The custom of receiving such evidence arose in England at an early date, when parties were incompetent to testify and the average shopman had no clerk to take the stand for him, and was based on the necessity for providing some means of proving his daily dealings.[1] Although Parliament, realizing the dangers inherent in such self-serving evidence, early curtailed its use,[2] it has survived in some of the lower courts of England and became well established in the early law of most of our States.[3] The necessity on which it was based has ceased, but the old rule has continued in force subject to statutory modifications[4] and local variations.[5] The original necessity of giving some evidence to the ineligible principal disappears when

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[26]Sarles *v.* Mayor (N. Y. 1866) 47 Barb. 447; Spring Valley Coal Co. *v.* Spring Valley (1896) 65 Ill. App. 571.

[27]Note 12, *supra.*

[1]See Waggeman *v.* Peters (1859) 22 Ill. 42.

[2]Stat. 7 Jac. I, c. 12 (1609).

[3]Foster *v.* Sinkler (S. C. 1787) 1 Bay 40; Sickles *v.* Mather (N. Y. 1838) 20 Wend. 72; Fielder *v.* Collier (1853) 13 Ga. 496; *contra,* Hissrick *v.* McPherson (1855) 20 Mo. 310, since changed by statute, Anchor Milling Co. *v.* Walsh (1891) 108 Mo. 277.

[4]2 Wigmore, Evidence § 1561 says: "It is perhaps vain to attempt to construe statutes whose framers themselves seem not to have understood precisely the bearing of their enactments."

[5]The book must ordinarily be verified by the suppletory oath of the party keeping it, if alive, Roche *v.* Ware (1886) 71 Cal. 375; Townsend *v.* Coleman (1858) 20 Tex. 817, but New York and New Jersey do not require it. Sickles *v.* Mather, *supra.* The New York Courts require that a foundation be laid "by proving that the party has no clerk, that some of the articles charged have been delivered, that the books produced are the account books of the party, and that he keeps fair and honest accounts, and this by those who have dealt and settled with him" on the strength of said account books. Vosburgh *v.* Thayer (N. Y. 1815) 12 Johns. 461. See Chicago etc. R. R. *v.* Provine (1883) 61 Miss. 288.